



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

David Keith

**MAY 31 2017**

Orlando, FL 32801-3855

RE: MUR 7087

Dear Mr. Keith:

On June 23, 2016, the Federal Election Commission notified you of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Upon further review of the allegations contained in the complaint and responses received, the Commission, on May 23, 2017, found that there is no reason to believe you violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Derek H. Ross, the attorney assigned to this matter, at (202) 694-1579.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

170444-10000

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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3 **RESPONDENTS:** Committee to Elect Alan Grayson and Dustin MUR 7087  
4 Andersen in his official capacity as treasurer  
5 Alan Grayson  
6 David Keith  
7 The Grayson Fund Management Company, LLC  
8 The Grayson Fund General Partner, LLC  
9 The Grayson Fund, LP  
10 Grayson Master Fund  
11 The Grayson Fund, Ltd.  
12

13 **I. INTRODUCTION**

14 Before running for Congress, Florida Congressman Alan Grayson formed the Grayson  
15 Investment Partnership, composed of five individual business entities. During the 2014 and  
16 2016 election cycles, the Committee to Elect Alan Grayson ("the Committee") employed David  
17 Keith as its finance director. In addition to receiving compensation from the Committee, Keith  
18 also received a salary from one or more of the partnership entities.

19 The Complaint alleges that the Committee and Dustin Andersen in his official capacity as  
20 treasurer and Grayson violated the Federal Election Campaign Act of 1971, as amended ("the  
21 Act"), and Commission regulations by failing to report the Grayson Investment Partnership's  
22 payments to Keith as contributions to the Committee. The Complaint further alleges that all  
23 Respondents violated the Act because the alleged contributions were excessive.<sup>1</sup> Based on the  
24 available information, the Commission finds no reason to believe the Respondents violated the  
25 Act.

<sup>1</sup> The entities comprising the Grayson Investment Partnership are the Grayson Fund Management Company, LLC, the Grayson Fund General Partner, LLC, the Grayson Fund, LP, the Grayson Master Fund, and the Grayson Fund, Ltd. (collectively, "the Grayson entities"). Respondents state that some of these entities no longer exist or are in the process of winding down, and those that still exist have been renamed by replacing the name "Grayson" with "Sibylline." Resp. at 1 fn 1 (Sept. 2, 2016).

## II. FACTUAL BACKGROUND

The Complaint arises out of various media reports regarding Grayson's actions as a hedge fund manager while serving in Congress and an Office of Congressional Ethics ("OCE") probe into the same.<sup>2</sup> The Complaint alleges that in or around April 2014, the Committee lowered Keith's salary from \$5,000 per month to \$4,000 per month, and around the same time, Keith started receiving \$1,000 monthly payments from the Grayson entities. The Complaint argues that these \$1,000 payments to Keith amount to contributions to the Committee that were never reported.<sup>3</sup> The Complaint also argues that the contributions exceeded the \$2,700 limit under the Act.<sup>4</sup>

In support, the Complaint includes portions of the Committee's filings from the relevant time periods and excerpts of OCE interviews regarding Keith's employment with the Grayson entities.<sup>5</sup> According to the Complaint, the OCE interviews reveal that Keith performed no real work for the Grayson entities and instead was paid by the Grayson entities for work done for the Committee.<sup>6</sup> The Complainant relies heavily on statements made by Grayson's Congressional Office Manager, who also worked part time performing office-management functions for the

<sup>2</sup> See, e.g., Eric Lipton, *Alan Grayson's Double Life: Congressman and Hedge Fund Manager*, N.Y. TIMES (Feb. 11, 2016), [http://www.nytimes.com/2016/02/12/us/politics/alan-graysons-double-life-congressman-and-hedge-fund-manager.html?\\_r=0](http://www.nytimes.com/2016/02/12/us/politics/alan-graysons-double-life-congressman-and-hedge-fund-manager.html?_r=0); see also Office of Cong. Ethics Review No. 15-6530, [https://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Grayson%20Report%20and%20Findings\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Grayson%20Report%20and%20Findings_0.pdf).

<sup>3</sup> Compl. at 4-5.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.*; see Office of Cong. Ethics Review No. 15-6530, at 73-74, [https://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Grayson%20Report%20and%20Findings\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Grayson%20Report%20and%20Findings_0.pdf). Although the OCE investigation recommended moving forward on a number of the allegations raised against Grayson, the recommendations do not involve violations of the Act at issue in this Complaint.

<sup>6</sup> Compl. at 3-4.

1 Grayson entities.<sup>7</sup> The Complaint reasons that because in her interview the Office Manager did  
2 not know what Keith's role was with the Grayson entities, Keith did not perform any work for  
3 the Grayson entities.<sup>8</sup> The Complaint bolsters this assertion with interview statements by  
4 Grayson that one of Keith's main duties was to attract new investors, but the Grayson entities  
5 had not "recently" sought out new investors.<sup>9</sup>

6 Respondents argue that the Grayson entities hired Keith to "train him in how to attract [ ]  
7 investors in the event Grayson decided not to run" for reelection.<sup>10</sup> They assert that Keith did  
8 indeed perform work for the Grayson entities, which included learning how to trade securities  
9 and other responsibilities delegated by Grayson.<sup>11</sup> Keith's salary was also intended to  
10 compensate him for foregoing other business opportunities.<sup>12</sup>

11 Respondents also argue that there is no correlation between the \$1,000 reduction in  
12 Keith's salary and the commencement of \$1,000 payments by the Grayson entities. They explain  
13 that Keith's salary, like that of many campaign staffers, varied from month to month.  
14 Respondents assert that the Complaint is based on a selective reading of the Committee's  
15 disbursement filings, and that a full review of the filings shows that Keith was paid various  
16 amounts over the course of his Committee employment.<sup>13</sup>

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<sup>7</sup> *Id.* Ex. B.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> Resp. at 3-4, Exs. B-C.

<sup>10</sup> Resp. at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

1 Finally, Respondents argue that the Complaint is based entirely on speculation.<sup>14</sup> They  
2 contend that the Complaint contains no evidence that the Grayson entities ever paid Keith for  
3 performing Committee work.<sup>15</sup> Moreover, Respondents assert that because Grayson had already  
4 loaned \$525,000 of his own money to the Committee, it was unlikely the Grayson entities would  
5 secretly funnel roughly \$15,000 to the Committee to bolster Keith's salary.<sup>16</sup>

### 6 III. LEGAL ANALYSIS

7 The Act defines "contribution" to include "any gift . . . or anything of value made by any  
8 person for the purpose of influencing any election for Federal office," as well as "payment by  
9 any person of compensation for the personal services of another person which are rendered to a  
10 political committee without charge for any purpose."<sup>17</sup> All political committees must file  
11 periodic reports with the Commission that disclose contributions received during the reporting  
12 period.<sup>18</sup> Together, 52 U.S.C. §§ 30116(a)(1)(A) and 30116(f) prohibit any "person" from  
13 making a contribution in excess of the limits to a candidate and prohibit a candidate or  
14 committee from knowingly accepting an excessive contribution.<sup>19</sup> Accordingly, the services  
15 provided by Keith to the Committee would qualify as excessive and unreported contributions

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<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> 52 U.S.C. §§ 30101(8)(A)(i) and (ii); *see also* 11 C.F.R. § 100.54.

<sup>18</sup> 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a)(2).

<sup>19</sup> *See also* 11 C.F.R. §§ 110.1(b)(1), 110.9. The individual contribution limit in effect from November 7, 2012, to November 4, 2014, was \$2,600. *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 FED. REG. 8,530, 8,532 (Feb. 6, 2013). The individual contribution limit in effect from November 5, 2014, to November 8, 2016, was \$2,700. *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 FED. REG. 5,750, 5,752 (Feb. 3, 2015).

1 under the Act if the Grayson entities compensated Keith for the purpose of influencing any  
2 election, or if the compensation was for services Keith rendered to the Committee. Because the  
3 complaint does not allege that the compensation to Keith was intended to influence any election,  
4 the analysis is focused on whether Keith received compensation from the Grayson entities for  
5 services he provided to the Committee.

6 The available information does not support a reasonable inference that the Grayson  
7 entities paid Keith to perform work for the Committee. Instead, as the Respondents point out,  
8 the Complaint is based on speculation and a selective reading of the Committee's filings.  
9 Although the decrease in Keith's salary from the Committee roughly corresponds to the time  
10 period he started receiving a salary from the Grayson entities, the Complaint does not identify  
11 any Committee work for which the Grayson entities paid Keith. Moreover, the Complaint  
12 ignores the possibility that if Keith began working eight hours per week for the Grayson entities,  
13 as stated in the OCE interviews,<sup>20</sup> the decrease in his salary could also correspond to eight fewer  
14 hours per week he worked for the Committee. Finally, the Office Manager's interview statement  
15 only establishes that she did not know what Keith did for the Grayson entities, not that she  
16 observed Keith doing Committee work while being paid by the Grayson entities.<sup>21</sup>

17 A review of the Committee's disbursements to Keith shows that he was paid various  
18 amounts over the course of his employment. For instance, it appears that in 2014, Keith was  
19 paid between \$4,000 and \$8,000 per month.<sup>22</sup> Similarly, in 2015, Keith was paid \$6,000 in some

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<sup>20</sup> Compl. Ex. B. at 0391.

<sup>21</sup> *Id.*

<sup>22</sup> See 2014 Amended July Quarterly Report, Comm. to Elect Alan Grayson (Aug. 14, 2014); 2014 Amended October Quarterly Report, Comm. to Elect Alan Grayson (Dec. 1, 2014); 2014 Amended 12-Day General Pre-Election Report, Comm. to Elect Alan Grayson (Dec. 1, 2014); 2014 Amended 30-Day General Post-Election

1 months, \$4,500 in others, and in some months, he received no compensation from the Committee  
2 at all.<sup>23</sup> Thus, there does not appear to be a direct correlation between the decrease in Keith's  
3 salary and the payments he received from the Grayson entities, and Respondents submitted a  
4 declaration from Grayson stating that Keith was compensated by the Grayson entities solely for  
5 work performed for those entities.<sup>24</sup>

6 Because the available information does not indicate that Keith received compensation  
7 from the Grayson entities for Committee work, the compensation he received does not qualify as  
8 a contribution from the Grayson entities to the Committee and also did not trigger any reporting  
9 requirement.<sup>25</sup> Accordingly, the Commission finds no reason to believe the Respondents  
10 violated the Act.

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Report, Comm. to Elect Alan Grayson (Mar. 27, 2015); 2014 Amended Year-End Report, Comm. to Elect Alan Grayson (Mar. 27, 2015).

<sup>23</sup> See 2015 Amended April Quarterly Report, Comm. to Elect Alan Grayson (July 9, 2015); 2015 Amended July Quarterly Report, Comm. to Elect Alan Grayson (Oct. 5, 2015); 2015 Amended October Quarterly Report, Comm. to Elect Alan Grayson (Dec. 21, 2015); 2015 Year-End Report, Comm. to Elect Alan Grayson (Feb. 1, 2016).

<sup>24</sup> Resp. Ex. 1, Decl. of Alan M. Grayson (Sept. 1, 2016).

<sup>25</sup> It is unclear how the limited liability Grayson entities have elected to be treated by the IRS for tax purposes, which determines whether they are allowed to contribute to federal campaigns. 11 C.F.R. §§ 110.1(g)(3), 114.2(b). The Complaint does not allege any violation of the corporate contribution ban, and because the information does not support the allegation that the Grayson entities made any contribution to the campaign, the question of their tax status is ultimately irrelevant.